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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

F&L MACHINERY DESIGN, INC.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

IVETTE GONZALEZ et al.,

Real Parties in Interest.

G043168

(Super. Ct. No. 30-2009-00317767)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, James J. DiCesare, Judge. Writ granted.

Willis | Depasquale, Larry N. Willis and Stephanie N. Rachel for Petitioners.

No appearance for Respondent.

No appearance for Real Parties in Interest.

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THE COURT:<sup>\*</sup>

On December 11, 2009, petitioner made its first appearance in the action when it filed its answer to the complaint for wrongful death. Twelve days later, on December 23, 2009, petitioner filed a peremptory challenge to the trial judge, stating in counsel's declaration that "the assigned judge for all purposes, including trial, is prejudiced against the defendant, and/or their attorneys, or the interests of the defendant, so that this declarant cannot or believes that defendant cannot have a fair and impartial trial before" this judge. (Code Civ. Proc., § 170.6.)

On January 11, 2010, the trial judge denied the challenge by minute order, calling it "untimely." (Code Civ. Proc., § 170.3, subd. (c)(3).)

Code of Civil Procedure section 170.6, subdivision (a)(2) states that a peremptory challenge to an all-purpose judge must be made within "within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance." But Government Code section 68616, subdivision (i), which is part of the Trial Court Delay Reduction Act, provides that, "Notwithstanding Section 170.6 of the Code of Civil Procedure, in direct calendar courts, challenges pursuant to that section shall be exercised within 15 days of the party's first appearance. Master calendar courts shall be governed solely by Section 170.6 of the Code of Civil Procedure."

Orange County Superior Court is a direct calendar court. On the filing of the complaint Judge DiCesare was assigned as the judge for this case. Thus, under Government Code section 68616, subdivision (i) petitioner had 15 days within which to file a peremptory challenge. Because the challenge was filed 12 days after petitioner had made its first appearance, the challenge was timely and the trial judge wrongly struck it

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<sup>\*</sup> Before Rylaarsdam, Acting P. J., Moore, J., and Aronson, J.

as untimely.

Petitioner requested issuance of a peremptory writ of mandate. We asked real parties in interest for an informal response to the petition but they elected not to do so. Because the issue of law is not seriously debatable, and no procedural purpose would be served by issuing an order to show cause and holding oral argument, we will issue a writ of mandate in the first instance. (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1252-1253.)

Let a peremptory writ of mandate issue directing the superior court to grant petitioner's peremptory challenge to Judge DiCesare. Costs for this proceeding may be assessed in the discretion of the superior court on behalf of the party ultimately prevailing at trial.